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11 **BEFORE THE**
12 **BOARD OF REGISTERED NURSING**
13 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

14 In the Matter of the Accusation Against:

15 **Brandon Matthew Duck,**
16 **712 San Juan Oaks Rd.**
Brentwood, California 94513

17 **Registered Nurse License No. 705917**

18 Respondent.

Case No. **2011-225**
ACCUSATION

19
20 Complainant alleges:

21 **PARTIES**

22 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
23 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
24 of Consumer Affairs.

25 2. On or about June 29, 2007, the Board of Registered Nursing issued Registered Nurse
26 License Number 705917 to Brandon Matthew Duck (Respondent). The Registered Nurse License
27 was in full force and effect at all times relevant to the charges brought herein and will expire on
28

1 August 31, 2012, unless renewed.

2 JURISDICTION

3 3. This Accusation is brought before the Board of Registered Nursing (Board),
4 Department of Consumer Affairs, under the authority of the following laws. All section
5 references are to the Business and Professions Code unless otherwise indicated.

6 STATUTORY PROVISIONS

7 4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part,
8 that the Board may discipline any licensee, including a licensee holding a temporary or an
9 inactive license, for any reason provided in Article 3 (commencing with Section 2750) of the
10 Nursing Practice Act.

11 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
12 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
13 licensee or to render a decision imposing discipline on the license. Under Section 2811(b) of the
14 Code, the Board may renew an expired license at any time within eight years after the expiration.

15 6. Section 2761 of the Code states:

16 "The board may take disciplinary action against a certified or licensed nurse or deny an
17 application for a certificate or license for any of the following:

18 ...
19 (f) Conviction of a felony or of any offense substantially related to the qualifications,
20 functions, and duties of a registered nurse, in which event the record of the conviction shall be
21 conclusive evidence thereof.

22 7. Section 2762 of the Code states:

23 In addition to other acts constituting unprofessional conduct within the meaning of this
24 chapter, it is unprofessional conduct for a person licensed under this chapter to do any of the
25 following:

26 ...
27 (b) Use any controlled substance as defined in Division 10 (commencing with Section
28 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in

1 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
2 himself or herself, any other person, or the public or to the extent that such use impairs his or her
3 ability to conduct with safety to the public the practice authorized by his or her license.

4 (c) Be convicted of a criminal offense involving the prescription, consumption, or
5 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
6 or the possession of, or falsification of a record pertaining to, the substances described in
7 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
8 thereof.

9 (d) Be committed or confined by a court of competent jurisdiction for intemperate use of or
10 addiction to the use of any of the substances described in subdivisions (a) and (b) of this section,
11 in which event the court order of commitment or confinement is prima facie evidence of such
12 commitment or confinement.

13 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or
14 revoke a license on the ground that the licensee has been convicted of a crime substantially
15 related to the qualifications, functions, or duties of the business or profession for which the
16 license was issued.

17 9. Section 118, subdivision (b), of the Code provides that the suspension/expiration
18 /surrender/cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction
19 to proceed with a disciplinary action during the period within which the license may be renewed,
20 restored, reissued or reinstated.

21 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
22 administrative law judge to direct a licentiate found to have committed a violation or violations of
23 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
24 enforcement of the case.

25 REGULATORY PROVISIONS

26 11. California Code of Regulations, Title 16, Section 1444, in pertinent part, provides that
27 a conviction or act shall be considered to be substantially related to the qualifications, functions
28 or duties of a registered nurse if to a substantial degree it evidences the present or potential

1 unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or
2 welfare.

3 CAUSE FOR DISCIPLINE

4 (Substantially Related Conviction)

5 12. Respondent is subject to discipline under Code sections 2761(f), 2762(b), 2762(c),
6 2762(d), and/or 490, as defined in section 1444, Title 16, California Code of Regulations, in that
7 on or about June 8, 2010, Respondent was convicted by his plea of guilty to the misdemeanor
8 violation of California Vehicle Code section 23152(a), (driving a vehicle while under the
9 influence of alcohol), with an admission to special allegations in Count 2, allegation 1 (driving
10 with a blood alcohol level of .08 or above). Respondent was sentenced to serve 3 years of Court
11 probation with 4 days in the county jail and payment of \$1,741.00 in fines and assessed fees. The
12 circumstances of the conviction are that on or about November 12, 2009, the California Highway
13 Patrol observed Respondent driving on the highway, weaving within the lane and then crossing
14 over into other lanes approximately three times and nearly colliding with a concrete barrier.
15 Based on these observations, the Highway Patrol initiated a traffic stop at which the CHP officer
16 noted that Respondent displayed objective signs of intoxication (red, watery eyes, slow, slurred
17 speech, odor of alcohol on his breath and unsteady gait). When asked if he had consumed
18 alcohol, Respondent admitted to the officer that he had "3 beers." The police administered
19 preliminary alcohol screening tests twice which showed a blood alcohol level of .192 in test one
20 and .201 in test two.

21 PRAYER

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Board of Registered Nursing issue a decision:

24 1. Revoking or suspending Registered Nurse License Number 705917, issued to
25 Brandon Matthew Duck;

26 2. Ordering Brandon Matthew Duck to pay the Board of Registered Nursing the
27 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
28 Professions Code section.125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED:

9/13/10

Louise R. Bailey

LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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